IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

FRIDAY, THE 25TH MAY 2007 / 4TH JYAISHTA 1929

WP(C).No. 525 of 2004(K)

PETITIONER:

AJITH KUMAR, S/O. CHELLAPPAN NADAR,
PONNAVILA VEEDU, KACHERY WARD,
VAZHUTHOOR, NEYYATTINKARA VILLAGE.

BY ADV. SRI.R.T.PRADEEP
SRI.V.VIJULAL
SRI.T.A.PRASANTH

RESPONDENTS:

THE STATE BANK OF TRAVANCORE,
NEYYATTINKARA BRANCH.

BY ADV. SRI.SATHISH NINAN
SRI.SANTHOSH MATHEW

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1 : TRUE COPY OF DECREE DT.01.10.1999 IN OS NO.14 OF 1997 OF SUB COURT, NEYYATTINKARA.

EXT.P2 : TRUE COPY OF EP NO.85 OF 2000 DT.28.8.2000 IN OS NO.14 OF 1997 FILED BY RESPONDENT BEFORE THE COURT OF SUB JUDGE, NEYYATTINKARA.

EXT.P3 : TRUE COPY OF ORDER DT.04.11.2003 IN EA NO.45 OF 2002 IN EP NO.85 OF 2000 IN OS NO.14 OF 1997 OF THE COURT OF THE SUB JUDGE, NEYYATTINKARA.

PIUS C. KURIAKOSE, J.

W.P.(C) No. 525 OF 2004

Dated this the 25th day of May, 2007

JUDGMENT

In this proceedings under Article 227 the petitioner who was the second judgment debtor in Ext.P1 decree obtained by the State Bank of Travancore impugns Ext.P3 order by which the execution court dismissed his application for re-calling the warrant which was ordered against him. The execution court became compelled to issue warrant when the petitioner did not enter appearance in response to the notice which was issued under Rule 37 of Order XXI CPC. The order of warrant is obviously not preceded by any enquiry regarding the sufficiency of the petitioner's means and his wilful negligence in the matter of discharging the decree debt. In other words, it is not preceded by enquiry under Rule 40 of Order XXI. Under these circumstances, in my view if the petitioner does not have to be aggrieved by the warrant which was refused to be re-called by Ext.P3. The warrant will be treated by the learned Sub Judge and by the parties as one for appearance of the petitioner. The petitioner will appear before the court below on the date posted by the execution court after he obtains copy of this judgment and thereupon the court will conduct an enquiry. Upon appearance the petitioner will be released on personal bond without

sureties and the court will pass orders to detain him in prison only on the basis of the enquiry under Rule 40 of Order XXI CPC.

The Writ Petition is disposed of as above. No costs.

PIUS C. KURIAKOSE, JUDGE

btt